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27 December 2011

MEMORANDUM FOR: Director, Central Intelligence Agency

VIA: Deputy Director, Central Intelligence Agency
Associate Deputy Director, Central Intelligence Agency

FROM: David B. Buckley
Inspector General

SUBJECT: (U) Review of the CIA-NYPD Relationship

1. (U//~~FOUO~~) Introduction. The Office of Inspector General (OIG) recently completed a review of certain CIA support to, and involvement with, the New York City Police Department (NYPD), including the NYPD Intelligence Division (NYPD-ID). The attached Executive Summary is provided for your information and contains the investigative findings and conclusions of the preliminary review.

2. (U//~~FOUO~~) OIG found no evidence that Agency employees violated certain prohibitions contained in Executive Order (EO) 12333 or the National Security Act of 1947 during the course of cooperating with or supporting NYPD post 9/11. This review also found no evidence to suggest that during the course of CIA's relationship with NYPD that Agency personnel, while engaged in the performance of CIA duties, either exercised law enforcement powers or engaged in intelligence activities solely directed at the domestic activities of US persons. Accordingly, I believe there is an insufficient basis to merit a full investigation into the CIA activities regarding the relationship with the NYPD at this time. My particular observations are provided below for your review and consideration for possible action.

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APPROVED FOR RELEASE DATE: 06-24-2013

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SUBJECT: [] Review of the CIA-NYPD Relationship

3. (U//~~FOUO~~) Observations. The Agency's longstanding relationship with NYPD-ID is unique. OIG is unaware of any similar relationships between the Agency and other local law enforcement entities in the United States. As a consequence, the risk to the Agency is considerable and multifaceted. While negative public perception is to be expected from the revelation of the Agency's close and direct collaboration with any local domestic police department, a perception that the Agency has exceeded its authorities diminishes the trust placed in the organization. This has the added potential of impeding our ability to effectively support law enforcement at both the local and federal level. Additionally, the risk that CIA officers could become involved in law enforcement matters exists if implementing procedures and policies designed to accommodate such collaboration are not clearly understood, managed well, and followed. A lapse in any one of these components when associated with domestic intelligence activities has the potential to make Agency officers vulnerable and could jeopardize the vital mission the Agency performs.

4. (U//~~FOUO~~) With these considerations in mind, OIG's discovery of a number of irregular personnel practices, the lack of formal documentation in some important instances, and the varying degrees of management and legal oversight regarding the CIA-NYPD relationship post 9/11 is noteworthy. The revelation of these issues, as discussed in more detail in the Executive Summary, leads me to conclude that the risks associated with the Agency's relationship with NYPD were not fully considered and that there was inadequate direction and control by the Agency managers responsible for the relationship.

5. ([]) For example, as reflected in the Executive Summary, OIG's preliminary review revealed an instance where an effort involving the temporary receipt and review of potentially unfiltered NYPD-ID reports did not appear to comport fully with the Attorney General-approved procedures implementing the requirements of EO 12333. Many current and former [] employees had different recollections and descriptions regarding what NYPD records the Agency employee assigned to NYPD should have received and reviewed. Furthermore, it is unclear what, if any, criteria NYPD may have used to pre-screen the NYPD-ID records before providing them to the Agency employee. In addition, there appears to have been no documentation between CIA and NYPD addressing specifically the employee's role concerning access

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APPROVED FOR RELEASE DATE: 06-24-2013

to NYPD records and the practices to be followed with respect to the sharing of lead information. Given the unique sensitivities reflected in _____ regarding the collection and retention of US persons information, as well as the legal and regulatory limitations and requirements on CIA's ability to provide assistance to local law enforcement, better documentation of the arrangement, practices, and appropriate approvals was warranted.

David B. Buckley

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RELEASE
DATE: 06-24-2013

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SUBJECT: [] Review of the CIA-NYPD Relationship

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APPROVED FOR
RELEASE
DATE: 06-24-2013

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Executive Summary
Report of the OIG Preliminary Inquiry into
the CIA-NYPD Relationship

I. (U) Scope and Background

1. (U//~~FOUO~~) **Scope of the Inquiry.** On 29 August 2011, the Inspector General (IG) directed that the Investigations Staff (INV) of the Office of Inspector General (OIG) conduct a preliminary inquiry into allegations of inappropriate CIA involvement in the activities of the New York City Police Department (NYPD), as reported in an Associated Press story. On 31 August 2011, the Acting Director CIA requested OIG expeditiously review CIA support to, and involvement with, NYPD. Based upon this request, OIG assembled a team of seven investigators, an Attorney, and a Research Assistant to conduct a preliminary inquiry of the CIA-NYPD relationship, including the NYPD Intelligence Division (NYPD-ID), to determine whether CIA actions violated Executive Order (EO) 12333, the National Security Act of 1947, and/or

Law and Policy Governing the Conduct of Intelligence Activities. OIG reviewed many thousands of records from its own holdings or provided to OIG by Agency components, consisting of cables, e-mails, official correspondence, Congressional briefing notes, personnel and security files, and Agency biographies. Over the course of its inquiry, OIG interviewed 33 individuals, some of them more than once, at various locations within the United States and overseas. (Exhibit)

2. (U//~~FOUO~~) **Background.** According to the witnesses we interviewed, before the 11 September 2001 (9/11) terrorist attack on the US, specifically the City of New York, the NYPD-ID was focused on VIP personal protection and criminal intelligence collection related principally to gang, narcotics activities, and organized crime. After 9/11, the ID dramatically expanded its focus on counterterrorism. In January 2002, NYPD Commissioner Raymond Kelly appointed David Cohen, a retired CIA Senior Intelligence Service (SIS) officer who had been working in the private sector in New York City, to be the Deputy Commissioner of Intelligence. Over several years, Cohen expanded the size of NYPD-ID and established several division initiatives directed at thwarting terrorist activities. As of the date of this Report, Cohen continues to serve as the Deputy Commissioner of Intelligence.

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APPROVED FOR
RELEASE
DATE: 06-24-2013

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(U) Report of the OIG Preliminary Inquiry into the CIA-NYPD Relationship

(U) II.

3. In early 2002, senior CIA management received requests for increased Intelligence Community (IC) support from federal, state, and local law enforcement, to include the NYPD. A Concept of Operations (CONOP) was developed by senior Agency officers in April 2002 for a temporary duty assignment (TDY) of a seasoned Directorate of Intelligence (DI) analyst to New York City for a six to nine month period under Director of Central Intelligence (DCI) authorities.¹ The officer's task was to improve analytic information-handling capabilities of law enforcement entities in the States of New York and New Jersey. On or about 4 June 2002, DI careerist [redacted] was selected and began what would eventually become a prolonged temporary duty assignment (TDY) as a DCI Representative until March 2004. [redacted] operated under then-DCI authorities, and held no official position with NYPD. [redacted] met with federal, state, and local law enforcement officials and assessed their needs for analytic counterterrorism (CT) assistance. His assigned goal was to help various local authorities develop strategies for improving their CT analysis.

4. [redacted] assignment to New York City ended in about March 2004. He returned to the Agency [redacted] he was contacted by Commissioner Kelly and offered a full-time position with NYPD. [redacted] was interested and he requested Leave Without Pay (LWOP) from the Agency so he could accept the NYPD offer. In addition, an Outside Activity Request explaining his intent to work for NYPD was submitted electronically on his behalf. In August 2004, the Agency approved [redacted] LWOP and Outside Activity Request, and [redacted] began employment as an [redacted] with NYPD, [redacted] Although [redacted] LWOP was initially approved for just a year, Agency records show he received annual approval for continued LWOP through his resignation from CIA in May 2009. A review of Agency records found no information that [redacted] was advised, either prior to or during the LWOP period, about prohibitions pertaining

¹ (U//FOUO) The Office of the Director of National Intelligence (ODNI) was created by statute in 2005 as the President's principal intelligence advisor and manager of the national intelligence community. Before the creation of the ODNI, the Director of Central Intelligence (DCI) served as both the head of the intelligence community and the head of the CIA. DCI Tenet directed [redacted] to New York City in 2002 under his DCI authorities as manager of the intelligence community.

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APPROVED FOR
RELEASE
DATE: 06-24-2013

~~SECRET~~//

(U) Report of the OIG Preliminary Inquiry into the CIA-NYPD Relationship

to EO 12333, the National Security Act, or _____ told
OIG he did not receive briefings on the law enforcement
restrictions.

5. _____ During the period he was in LWOP, _____ did
not consider himself an Agency officer and believed he had "no
limitations" as far as what he could or could not do. _____

_____ The
FBI conducted _____ background investigation in 2006 so he
could maintain a security clearance while serving in NYPD.
_____ although not a sworn law enforcement officer, performed
the functions of a full-time civilian _____
during the LWOP period.² Consequently, _____ participated
in all activities of his position and rank to include supervision
and direction of ALL NYPD investigations, operations, and
surveillance activities directed at US persons and non-US persons.
According to CIA's Office of General Counsel (OGC), the "law
enforcement proviso" of the National Security Act, which prohibits
the Agency as an institution from exercising police or law
enforcement or internal security functions, generally does not
apply to the activities of an employee on LWOP, as long as the
individual was acting in a personal capacity and not subject to
CIA direction. OIG found no evidence indicating that while
_____ was on LWOP, he was acting on behalf of the Agency.
Following _____ resignation from the Agency _____ he
continued his employment _____ with NYPD,

III. (U//~~FOUO~~) NYPD Detective Trained at CIA

6. _____ Assistant Commissioner Cohen, in coordination
with Commissioner Kelly, requested that an experienced NYPD-ID
detective receive Agency operational training to enhance the
capability of NYPD-ID CT efforts. Agency management _____
Headquarters concurred. An NYPD detective was
detailed to the Agency from October 2008 through November 2009
to attend the _____

_____ The detective, _____ failed to
successfully complete _____ and subsequently returned to NYPD-ID

² (U) OIG was advised by NYPD there were a number of NYPD
_____ at the time, and others were also civilians.

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APPROVED FOR
RELEASE
DATE: 06-24-2013

~~SECRET~~/

(U) Report of the OIG Preliminary Inquiry into the CIA-NYPD Relationship

in November 2009. The proposal to train the detective received extensive review from senior Agency management, to include the Associate Deputy Director, Director of the National Clandestine Service (NCS), and the Senior Deputy General Counsel, before being approved in accordance with [] requirements. [] was the only NYPD officer afforded such training.

IV. []

7. [] On 9 August 2007, [] requested a full-time permanent [] analyst to support NYPD-ID. A Memorandum of Agreement (MOA) was drawn-up []

[] to provide direct support to NYPD. In this newly created position, [] provided direct analytic support to NYPD-ID. The MOA documented that [] would identify potential foreign leads of interest to CIA; []

[] he would remain under CIA authorities and bound by Agency restrictions throughout his assignment; []

Although the MOA was not signed until [] informed OIG that [] management advised him to ignore any information that was unrelated to foreign intelligence (FI). [] an experienced analyst, told OIG he was knowledgeable about the prohibitions as an Agency officer working alongside domestic law enforcement. He stated he did not engage in any law enforcement or otherwise prohibited activities, to include improper collection regarding US persons, while he served in this position.

8. [] told OIG that during the first two months of his assignment, he received daily PDF files containing NYPD-ID investigative reports, known as DD-5s, that he believed were unfiltered (e.g., the reports had not been pre-screened to remove potential non-FI related information). However, most of these reports dealt with criminal activity and were not of potential FI value. [] claimed that after two months his presumed unfiltered access was removed and he was dependent upon NYPD analysts to provide him with filtered, hard copy DD-5 reports of FI value. [] estimated he received somewhere between 0 to 12 reports each day, and that approximately once every two months, []

However, others interviewed by OIG, including a former NYPD-ID analyst and now staff officer with NCS, maintained that no one, []

~~SECRET~~/ 4

APPROVED FOR
RELEASE
DATE: 06-24-2013

~~SECRET~~//

(U) Report of the OIG Preliminary Inquiry into the CIA-NYPD Relationship

including [] had unrestricted or unfiltered access to DD-5 reports, except NYPD-ID analysts, [] and Cohen.

9. [] an experienced analyst [] was chosen to replace [] and she began her assignment []

However, unlike [] she engages exclusively in training NYPD analysts in analytic tradecraft. Although an experienced officer who claimed she was aware of the limitations when working with local law enforcement, [] had not signed an MOA at the time she was interviewed by OIG in []

During the course of the OIG inquiry, DDCIA Morell was briefed by OIG about the findings thus far, and subsequently he directed that [] management ensure the MOA for [] was signed. As of the date of this report, OIG has no information this has been finalized.

V.

10. [] According to accounts of senior Agency officers, Cohen contacted Deputy Director Morell for a "replacement for []" Director/NCS John D. Bennett subsequently selected senior [] manager [] for assignment to NYPD, but not as a replacement for [] or as an []

[] and was looking for a new assignment. [] NYPD position was defined by Cohen as executive development for [] and not to fill [] role as an [] says he initially was not interested in the NYPD position but decided to meet with Kelly and Cohen [] was interested in what he learned from Kelly and Cohen, and he eventually decided to accept the NYPD executive development position. [] an MOA was drawn up and signed, and [] began his assignment to New York on [] as a Special Representative to NYPD. The MOA defined [] role: he would be co-located with NYPD-ID but remain an Agency officer, operating under CIA authorities, and would be limited by restrictions applicable to Agency activities.

[] would not have any law enforcement authorities, and he would not exercise law enforcement, police, or internal security powers. OGC briefed [] on the law-enforcement-related limitations of his assignment.

~~SECRET~~// 5

APPROVED FOR
RELEASE
DATE: 06-24-2013

~~SECRET//~~

(U) Report of the OIG Preliminary Inquiry into the CIA-NYPD Relationship

In addition, [] had no FI collection responsibilities []

11. [] The MOA enumerated the justification for [] assignment as mutually beneficial to the Agency and NYPD. [] told OIG he understood the legal limitations regarding his authorities and said he was careful not to overstep his bounds. He said he spent considerable time and effort trying to help NYPD improve its volatile relationship with the local FBI and specifically the FBI-led Joint Terrorism Task Force.

12. (U//~~FOUO~~) During the course of its inquiry, OIG received information from current and former senior Agency officials who expressed concern that his position with NYPD had placed the Agency in the middle of a contentious relationship between the FBI and NYPD.

VI. (U) Conclusions

13. (U//~~FOUO~~) OIG's preliminary inquiry found no information or evidence that Agency officers engaged or participated in any activities that violated EO 12333 or the National Security Act of 1947. Specifically, OIG found no evidence indicating that Agency officers conducted intelligence activities directed at the purely domestic activities of US persons in violation of EO 12333 or that Agency officers, while engaged in the performance of CIA duties, exercised any law enforcement, police, or internal security powers in violation of the National Security Act of 1947.

EO 12333 and Agency regulations authorize the Agency to provide assistance to local law enforcement entities in certain circumstances provided that necessary approvals have been obtained.

14. (U//~~FOUO~~) OIG's inquiry identified a potential [] issue that may have occurred from about February to April 2008, with regard to certain collection activities within the US. A previous [] officer assigned to NYPD-ID believed he temporarily received/had access to particular "unfiltered" NYPD-ID reports. OIG, on 8 November 2011, reported this potential [] violation to the Intelligence Oversight Board, as required by EO 12333.

6
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RELEASE
DATE: 06-24-2013

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(U) Report of the OIG Preliminary Inquiry into the CIA-NYPD Relationship

15. (U//~~FOUO~~) Agency staff officers provided direct assistance to NYPD, initially to identify ways to improve IC support to, and information sharing with, law enforcement, followed by efforts to develop the analytical expertise of NYPD-ID in dealing with counterterrorism issues of local concern. Since 2002, CIA has assigned a total of four officers to provide direct assistance to NYPD.

16. (U//~~FOUO~~) The Agency provided these officers with varying degrees of management and legal oversight and guidance during their respective assignments. The personnel assigned to assist NYPD had different functions and different levels of understanding of their respective role as an Agency staff employee assigned to work with NYPD. OIG's inquiry found inconsistent administrative documentation and levels of review regarding LWOP approvals, MOAs, information-sharing arrangements, and Outside Activity Requests. With respect to each Agency officer assigned to NYPD, the inquiry identified, albeit at various intervals and degrees, consultation with OGC, as required by _____ when the Agency provides generalized training to state or local law enforcement.

17. (U//~~FOUO~~) OIG's preliminary inquiry found that issues raised in 2008 with respect to the appropriateness of providing specialized operational training to an NYPD detective received extensive review and assessment by Agency personnel, including OGC attorneys. Agency senior management, including the Associate Deputy Director, Director of the NCS, and the Senior Deputy General Counsel subsequently approved this training, and the NYPD detective was temporarily detailed to the Agency and attended a portion of the Agency's _____ before returning to NYPD.

18. (C) OIG determined that the assignment of _____ to NYPD _____ placed the Agency more prominently in the middle of a contentious relationship between the FBI and the NYPD regarding NYPD's efforts to combat terrorism. In OIG interviews, several current and former senior-level officers expressed concerns with _____ assignment and role as a senior Agency manager working directly with the NYPD.

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(U) Report of the OIG Preliminary Inquiry into the CIA-NYPD Relationship.

Exhibit *

Individuals Interviewed for OIG Preliminary Inquiry
on the CIA-NYPD Relationship



* Exhibit is classified ~~SECRET~~ if separated from
Executive Summary

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